

Preliminary Finding and Decision

**Proposed State Land Sale
Bottley Creek Remote Odd lot
AS 38.05.035(e)**

**Proposed Mineral Closing Order
AS 38.05.185**

**Proposed Special Exception
To Copper River Basin Area Plan
AS 38.04.065(b)**

Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (Division), proposes to survey and offer for sale one parcel of state land for private ownership. The proposed Bottley Creek Remote Odd Lot is one parcel consisting of 5 gross acres more or less; see Attachment A. The parcel will be offered for sale through a public sealed bid auction. This parcel has not been offered under any previous land sale program. The purpose of the sale is to provide land for settlement within the Nelchina River area. The sale of this parcel will help meet the State's goals of making quality State land available for private ownership and will also generate revenue.

To prevent potential conflicts between surface and subsurface users within the project area, the Division proposes to close the project area to mineral entry. No mineral activity has been identified within the proposed project boundary.

The Division proposes to request a Special Exception to the Copper River Basin Area Plan to allow for the conveyance of the parcel.

Authority

Alaska Statutes: **38.04.005** – Public and Private Land Use Policy; **38.04.010** – Making Land Available for Private Use; **38.04.020** – Land Disposal Bank; **38.04.035** – Criteria for Program Selection; **38.04.045** – Survey and Subdivision; **38.04.050** – Access to Private Use Areas; **38.04.055** – Access Through Private Use Areas; **38.05.005** – Division of Lands; **38.05.035** – Powers and Duties of the Director; **38.05.045** – General Provisions for the sale of Land; **38.05.050** – Disposal of Land for Private Ownership; **38.05.055** –

Procedures for Sale by Auction; **38.05.125** – Reservation of Rights; **38.05.127** – Access to Navigable or Public Water; **38.05.185** – General Policy on Mineral Location; **38.05.840** – Appraisal Policy; **38.05.910** – Policy of the State to Encourage Settlement; **38.05.940** – Land Purchase Price Discount for Veterans; and **38.05.945** – Requirements for Notice.

Alaska Administrative Code (AAC) Title 11, Chapter 55- Land Planning and Classification

Administrative Record

The administrative record for the proposed action consists of the Bottley Creek Remote Odd Lot project file as well as the following case files: ADL 229507, ADL 214703, and ADL 222865. Also incorporated by reference is the Copper River Basin Area Plan dated December, 1986.

Scope of the Decision

The Division proposes to survey and offer for sale State land, referred to as the Bottley Creek Remote Odd Lot, through a public sealed bid auction. The Division proposes to close the project area, totaling 5 acres more or less, to mineral entry to prevent potential conflicts between surface and subsurface use. The Division also proposes to request a special exception to the Copper River Basin Area Plan to allow for the conveyance of the parcel. Prior to adoption of the Area Plan, a portion of the targeted parcel was leased to the public under a previous land offering program as a private lot, ADL 214703, but was subsequently returned to the State through default. The current proposal will maintain the intent of the Area Plan based upon the size, location, and history of the parcel. The minimum bid for the parcel will be set at the appraised fair market value. Bidders will be required to provide a deposit of no less than 5% of their bid amount. The state will return the deposit to unsuccessful bidders. The Division does not intend to impose deed restrictions to control post-patent use. Restrictions regarding land use will be handled by the local zoning authority, if any.

Location

Geographic: The Bottley Creek Odd Lot is located approximately five miles south from the Glenn Highway in a vicinity between the Little Nelchina State Recreation Site (MP 137.6) and the Mendeltna Creek Bridge (MP 152.7). Bottley Creek serves as the eastern boundary of the parcel. Tract B of ASLS 86-66 is adjacent to the north, Tract C of ASLS 86-66 is adjacent to the South. Twin Lakes are to the west approximately two miles. The Nelchina River is approximately 2 miles north of the parcel.

Municipality: None

Alaska Coastal District: None

Regional/Village Corporations/Councils: Ahtna, Inc; Native Village of Cantwell; Native Village of Chistochina; Chitina Traditional Village; Native Village of Kluti-kaah; Native

Village of Gakona; Gulkana Village; Native Village of Tazlina; Nelchina-Mendeltna
Community Association

USGS Map Coverage: USGS Quad Valdez D-8

Legal Description: An unsurveyed portion of land lying between Tract B and Tract C of Alaska State Land Survey (ASLS) 86-66 within the S1/2S1/2NE1/4NW1/4 Section 20, Township 2 North, Range 8 West, Copper River Meridian, containing 5 acres more or less.

Title

Acquisition Authority: The project area was acquired through Statehood entitlement under the Act of July 7, 1958, 72 Stat. 339, as amended. The State received Patent for the land and mineral estate under this entitlement on 6/13/85. The Patent Number is 50-85-0422. The applicable State case file is GS 1655.

Title Status: GS 1655 - State Patented Land #50-85-0422 as per Title Report SC-06-004, current as of October 7, 2005.

Title Restriction: The following CONDITIONS contained in the conveyance document apply to the subject land:

There is excepted and reserved from the conveyance

1. a right-of-way for ditches or canals constructed by the authority of the U.S. in accordance with the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Other Conflicts and Pending Interest: The State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing and producing these reserved mineral resources. Under common law, this access reservation is superior to any and all surface uses. The State may also lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

Background

Chronological Background and History

- 1981 – Area closed to mineral development (MCO 198).
- 1982 – A portion of the parcel is staked out for remote recreation (ADL 214703).
- 1985 – State receives patent to the project area from Bureau of Land Management (GS 1655).
- 1985 – Staked portion of the parcel returns to state ownership (ADL 214703).
- 1986 – Area Plan is adopted.

1994 – Area reopened to mineral development (MOO 694).
2004 – Private individuals request the parcel be considered for Land Sales.
2005 – Division of Mining, Land, and Water, Land Sales Unit targets the Bottley Creek Remote Odd Lot project area for future disposal to be included in a future State land offering.

Planning and Classification

DNR Land Use Plan: The project area is located within the Copper River Basin Area Plan, Management Unit 10 – West of Tazlina Lake, Sub Unit 10a.

Land Classification: The Copper River Basin Area Plan (CRBAP) was approved December 1986. At that time, the area, that included the current project, was classified as Forestry, Public Recreation, and Wildlife Habitat, CL SC-86-030. In Chapter 3 of the plan, reference is made to a previous land offering in the area currently being targeted. Prior to the adoption of the area plan the classification for this area was Private Recreation, CL SC-81-051. A special exemption to the CBRAP is being requested due to current classification.

Copper River Basin Area Plan Special Exception: In order to convey the proposed parcel, a 'special exemption' to the Copper River Basin Area Plan will be necessary. Pursuant to 11AAC 55.030, a 'special exemption' does not permanently change the provisions of a land use plan and cannot be used as the basis for a reclassification of the area plan subunit. Instead it allows a one-time, limited-purpose variance of the plan's provisions, without changing the plan's general management intent or guidelines. Based upon the size, location, and history of the parcel in question the management intent of Sub Unit 10a will be maintained. A description of the offering in question is a 5-acre parcel, located between two existing private parcels, and a portion of the parcel was previously available under a prior land offering. The overall design of the current offering should not have any large impacts on forestry practices, public recreation practices, or hinder wildlife management intent under the plan. Also to consider, Copper River Basin Area Plan, Chapter 2, pages 2-29 and 2-30, Land Allocation Summary, the proposed parcel appears to meet all the criteria for proposed offerings including Section 5 as the parcel was nominated by a member of the public.

Alaska Coastal Management Program: Not applicable.

Mineral Closing Order: There is currently no mineral closing order for this project area. The Division of Mining, Land and Water proposes to close the project area to mineral entry in accordance with AS 38.05.185 for a land disposal. Mining activity would be incompatible with the past, current, and proposed surface uses for land disposals. To allow mineral location in the proposed project area could create serious conflicts between surface and potential subsurface users. Area plan subsurface management policy states that, in general, areas scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between surface and subsurface users. However, a mineral

closing order does not close the project to oil and gas exploration and development. The project area may still be subject to potential oil and gas leasing and exploration.

Municipal Zoning and Comprehensive Plan: No municipal zoning or comprehensive plan exists for this project area.

Easements and Setbacks: The surveyed parcel will be subject to a 50-foot public access easement and 75-foot building setback upland from the ordinary high water mark of Bottley Creek. In addition, a 25-foot lot line easement will be created along inner lot lines for public access and utilities. To be consistent with adjacent surveyed tracts of ASLS 86-66, this parcel will maintain a 100' survey setback from the ordinary high water mark of Bottley Creek.

Traditional Use Finding: In accordance with AS 38.05.830, a traditional use finding is required because this request is considered a disposal of state land in an unorganized borough. The parcel in question is located between two previously platted remote cabin staking parcels along Bottley Creek. Potential uses for the area appears to be hunting, fishing, and trapping. This parcel would incorporate any existing public accesses and easements to maintain existing traditional uses. Based upon the size of the lot and actual population density, any impacts to the existing traditional land uses should be minimal.

Access to the Parcel

Access to the project area may be obtained from the north of the proposed project along an existing easement, ADL 222865, leading to/from the Glenn Highway. Alternate legal access to the project will be reserved across state owned lands as generally allowed if necessary. There may be existing trails already located within or near the project area that may be used for access purposes.

Public and Navigable Water Body Determination

Waters Determined Public or Navigable: Lakes larger than 50 acres in size or streams larger than 50 feet in width are considered navigable for title purposes. A 50-foot public access easement and 75-foot building setback will be reserved upland from the ordinary high water mark on all public and navigable water bodies within the project area, in accordance with AS 38.05.127 and 11 AAC 51.035.

To be consistent with adjacent surveyed tracts of ASLS 86-66, this parcel will maintain a 100' survey setback from the ordinary high water mark of Bottley Creek.

Survey and Appraisal

Survey: Depending on agency and public feedback, physical conditions of the land, and access issues, the Division proposes to survey the project area as a single parcel totaling 5 acres, more or less. (The survey project is not located within an organized borough and

is subject to the State platting authority.) The cost for surveying will be paid for from funds allotted for new settlement area development.

Appraisal: This parcel will have a current, fair market value appraisal completed prior to sale. The parcel will be offered through a competitive, sealed bid auction where the minimum bid price is the appraised fair market value. Cost for appraisal will be paid for from funds allotted for new settlement area development.

Agency Comments

Agency review occurred for the proposed project. The review began on May 20, 2005 and concluded on June 20, 2005 for the project area. Comments received during the Agency Review period are summarized below:

Alaska Department of Transportation- Right of Way Section:

All future State subdivision shall acquire permits **AND CONSTRUCT** driveway/approach road access from the adjacent State road, through the right of way, to the subdivision boundary. This is the minimum that ADOT&PF will accept. (However, DNR should be encouraged to do even more, i.e. construct at least one or more interior “starter” roads.)

Right of Way issues concerning access and State subdivisions

Permitted AND CONSTRUCTED access to State subdivisions

- Is critical to maintaining the safety and integrity of the roadway for the traveling public and private landowners.
- Is critical for efficient ADOT&PF maintenance of the intersections of State Roads with subdivision roads.
- Will ensure that ADOT&PF approach road design standards are met.
- Will increase lot values within State subdivisions. (defer to Appraisal Supervisor regarding an appraiser who reduces values on State parcels due to poor or no access)
- Will prevent many neighborhood feuds (Chena Hot Springs II, Delta Homesites—see Pete and Darla for other examples, etc.)
- Will provide better access for fire protection. (West Fork 2002 and Wolf Creek 2004—each year this costs the State millions of dollars, can’t drive engines in for structure protection, etc.)

Besides constructing the approach through the right of way, the State DNR should consider providing a DML&W (subdivision) lot near the State road for subdivision parking and staging (e.g. City of Valdez and Robe Lake). (Even if interior roads are not constructed right away, property owners will still have safe (but not necessarily secure) place to park while they visit or work their properties.)

The State, by not constructing road access from the State road to the subdivision boundary (and/or beyond), places a huge and unequal financial burden on individual lot owners who are forced to construct these subdivision roads at their own expense if they want road access. (Seiferts are up to \$35,000 for the approach road to their DNR lot.) This situation also invites neighborhood feuds—late buyers in the subdivision rarely offer

to reimburse the early buyer for his road construction costs, and hard feelings result. These hard feelings often fester and manifest themselves for years. The State should just build some 'starter' roads in the subdivision, and recoup the cost through higher lot prices.

Plat notes need to be added to the subdivision plats regarding access

- There shall be no driveway access from any subdivision lot directly onto the State road. All lot access shall be via interior subdivision roads **only**.
- There should be some note saying that ADOT&PF approval of the plat comes only with the concurrent construction of the approaches.

Response: Access to the parcel is proposed along an existing easement, ADL 222855, and in accordance with Generally Allowed Uses on State owned lands.

Through the Subdivision Sale Brochure, the private landowner of the proposed project will be informed of their responsibilities for all road development and/or maintenance requirements. Landowners will be directed to contact the DOT&PF for permitting requirements if necessary.

DNR will work with DOT&PF and other state agencies to ensure access requirements are met.

Alaska Department of Fish and Game:

Bottley Creek is likely to have seasonal Arctic grayling, thus, AD&G recommends that a 66-foot RMZ (Riparian Management Zone) be included in the subdivision sale, which should be consistent with adjacent parcels.

There is no specific concern from the Division of Wildlife Conservation. However, a general concern with land disposals, particularly in remote areas, is the potential influence on the wildfire suppression regime. For instance, an area designated for modified or limited suppression, with an objective of wildlife habitat enhancement, may be changed to full or critical suppression status in conjunction with a disposal. The concern is that the particular designation will extend far beyond the boundary of the development, thus, affecting a large area of potential habitat. ADF&G encourages ADNDR to be cognizant of this scenario and provide information on wildfire suppression status of an area in the description of the disposal project.

Response: To be consistent with adjacent surveyed tracts of ASLS 86-66, this parcel will maintain a 100' survey setback from the ordinary high water mark of Bottley Creek as well as, in accordance with the Copper River Basin Area Plan, a required 75-foot building setback from the ordinary high water mark which will meet the RMZ requested by Fish and Game. The Department recognizes the value of wildfires as a management tool for wildlife habitat, and will, to the extent feasible and prudent, seek to minimize large-scale impacts. As a single, remote parcel, the impact should be minimal to wildlife management needs. A

notice in the sales brochure will advise potential owners of limited or no wildfire suppression capabilities for the parcel area.

Office of Economic Development:

The land is considered non-mineral. There could be some potential for sand and gravel deposits on some of the parcels, however. The extensive existence of sand and gravel in the state makes this a non-issue.

Response: The remoteness of this project area would preclude any use of the land for material purposes.

Department of Commerce- Community & Economic Development:

The State has a Governor's Administrative Order 175 that brings the State into compliance with the National Flood Plain Insurance Program. AO 175 also requires State agencies to evaluate erosion hazards. I looked at a few of the subdivision descriptions but could not tell if there were setbacks from water bodies. I have attached below the AO 175 requirement that pertains to DNR Land Disposals:

4. State agencies responsible for the leasing or disposal of lands or properties shall, to the extent the action is economically feasible, evaluate flood and erosion hazards in connection with lands or properties proposed for disposal and , in order to minimize future state expenditures for protection and disaster relief, shall consider including within all new subdivisions proposals and other proposed developments greater than 50 lots or 5 acres, whichever is lesser, base (100) year flood elevation data, or information on approximate flood risks.

FNSB Title 17 is the same as all other cities and boroughs that are in the NFIP in that they have this requirement in their local code:

within Zone A on the community's FHBM or FIRM; (3) Require that all new subdivisions proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood plain elevation date; (4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from Federal, State, or other source.

DNR should be including this Base Flood Elevation data on their proposed new subdivision plats if the areas have been determined by the city(ies) or borough(s) to be within a flood hazard, i.e. mapped by FEMA as within an Unnumbered A Zone, a special flood hazard area that does not have BFEs determined."

Response: The Bottley Creek project is located outside an organized borough, is not located within any city limits, and represents a small, single remote recreational parcel. In addition, no flood plain data is available for Bottley Creek. Potential purchasers will be

made aware of the potential for flooding inherent in water front property through the Land Sales brochure. It is not economically feasible to do an evaluation of this parcel for flood and erosion hazards.

Department of Natural Resources- Mining Section:

The mining section has reviewed these disposal areas and there are no conflicts with current mineral rights. The mineral potential for these areas are low, therefore we have no problem with the disposal areas being closed to mineral entry.

Department of Transportation- Aviation:

The proposed locations do not appear to be near any state owned airports so we do not have any comments.

Department of Natural Resources- Northern Region Land Section

Access issues need to be better defined and legitimized before disposal of the areas.

Impact on a local community/village needs to be evaluated before repeated disposals in the vicinity. The Disposals program and the other sections can work together to determine how to quantify this impact. An example of an impacted community is Minto, which is in proximity to current (Tatlina) and projected (Hulitakwa) disposal areas along the Elliot Highway.

Response: The current disposal has legal access along existing easements and across State owned lands as generally allowed. As a single remote parcel, this project would have little impact if any on the communities in the area.

Department of Natural Resources- Division of Oil and Gas

The Division of Oil and Gas is asking that all conveyances/reconveyance actions in which the state retains the mineral estate make the mineral (and access) reservations very clear as early in the adjudication process as possible.

Most decisions inform the applicant of the reservation by citing the statute. However, they do not give the exact reservation language to be used, especially the portion reserving to the State and its successors the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved minerals. Under common law, this access reservation is superior to any and all surface uses. Surface owners are only entitled to damage (AS 38.05.130) resulting from surface access by the mineral owner/lessee, and does not have the legal ability to deny reasonable access.

Many surface disposals also include a Mineral Closing Order for the disposal area, but fail to fully explain the effect of the MCO- specifically that the MCO is for locatable minerals and does not cover oil and gas and access to the same.

The division deals with surface owners, including native allottees and municipalities, on a regular basis when reviewing plans of operations for state oil and gas licenses. The division would prefer that the grantee be well aware of the mineral reservation and the reservation of access to the surface. An informed surface owner is much easier for the state and its mineral entrants/lessees to deal with at such time as surface access becomes necessary.

All State-owned subsurface (with the exception of some Legislatively Designated Areas) is currently leased/licensed for O&G or offered for either competitive O&G leasing or O&G exploration licensing annually.

Response: The project area will be subject to a mineral closing order prior to being made available for sale, to reduce potential for surface and subsurface use conflicts. In addition, at the time of auction, a similar warning is included in the brochure materials warning potential purchasers. However, this decision (see Mineral Closing Section) and the auction brochure will inform potential purchasers about the potential impacts caused by subsurface mineral exploration and/or development, and that Alaska law provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

The land sale brochure will state the following:

The state retains ownership of all oil, gas, coal, ore, minerals, fissionable materials, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). The State reserves the right to enter onto the land to explore for and develop these mineral resources. The State may lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

Environmental Risk Assessment

There are no major environmental risks associated with the proposal to survey and offer this project for sale. Other impacts as a direct result of the proposed offerings would be as follows: The anticipated changes as a result of offering areas under this program are a slight increase in private land ownership in Nelchina River/Eureka area. There will be a potential increase in related private and recreational activities over time, including access and housing construction. Associated changes may be an increase in hunting, fishing, and other summer and winter recreational activities in the area resulting in erosion along stream beds. Mitigation measures to reduce the potential environmental risks are the 100' survey setback along Bottley Creek for protection of riparian habitat, as well as a 75-foot building set back from the ordinary high water mark along Bottley Creek.

The division will identify and consolidate access corridors to minimize the impacts of road or trail development.

Alternatives

The following alternatives were considered:

Alternative 1: Do not offer the Bottley Creek Remote Odd Lot for sale. Therefore the special exception and mineral closing order would not be required.

Alternative 2: Survey and sell the parcel as-is with staying consistent with previously surveyed tracts adjacent to the project.

The preferred alternative would be Alternative 2. As the Alaska Legislature as well as private citizens have indicated a desire for DNR to offer for sale, accessible, quality State land for private ownership, offering this parcel would meet those needs. In addition, this specific parcel has been nominated by members of the public as desirable. By making this parcel available, DNR will provide an opportunity for Alaskans to purchase quality, accessible State land.

Recommendation

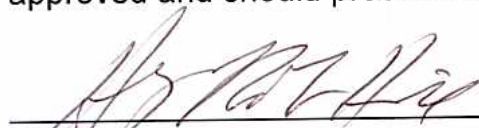
The proposed action is consistent with the overall management intent for state land and the action may be in the State's best interest, as it satisfies a demand for accessible, quality land for private ownership. The proposed action is consistent with the Copper River Basin Area Plan and will generate revenue for the State. I recommend that the decision to survey, if necessary, the proposed Bottley Creek Remote Odd Lot, and offer it for sale through a public sealed bid auction consistent with Alternative 2.



Jennifer Smith
Natural Resource Specialist II
Subdivision Sales Program
Land Sales and Contract Administration

11/23/05
Date

I find that the proposed action may be in the State's best interest and it is hereby approved and should proceed to public notice in accordance with AS 38.05.945.



Holly Hill
Section Manager
Land Sales and Contract Administration

11/23/05
Date

Public Notice

Pursuant to AS 38.05.945, public notice of this action will be conducted. The public is invited to comment on the proposed action. Copies of the preliminary decision are available at the Division of Mining, Land, and Water, Land Sales and Contract Administration Section, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576. Copies are also available at the Department's Public Information Offices in Juneau, Fairbanks, and Anchorage or at <http://www.dnr.state.ak.us/mlw/landsale/index.htm>. Comments must be received in writing by the Division of Mining, Land, and Water, Land Sales and Contract Administration Section, Attention: Jennifer Smith, 550 West 7th Avenue, Suite 640, Anchorage, AK 99501-3576 on or before **5:00 p.m. Friday, December 23, 2005** in order to ensure consideration. Comments may also be sent via e-mail to jennifer_smith@dnr.state.ak.us or by fax at (907) 269-8916.

All written responses will be considered. Only persons who comment during the comment period will be eligible to file an administrative appeal of the final finding and decision.

If public comment in response to this notice indicates the need for significant changes in the above decision, additional public notice for the affected decision will be given on or about the beginning of February, 2006. The State reserves the right to withdraw a parcel from consideration at any time. Withdrawing a parcel will not be considered a significant change requiring public notice. If no significant change is required, the Preliminary Finding and Decision, including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision of the Department of Natural Resources, without further notice. The final decision will set out the applicable process for appealing the decision under AS 38.05.035 (i)-(m). A copy of the final decision will also be available at the address above and will be sent to any person who comments on the preliminary decision. If you have any questions concerning this proposed action, please contact Jennifer Smith at (907) 269-8591. Individuals with audio impairments may call the department's Public Information Center in Anchorage between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, at TDD# (907) 269-8411.

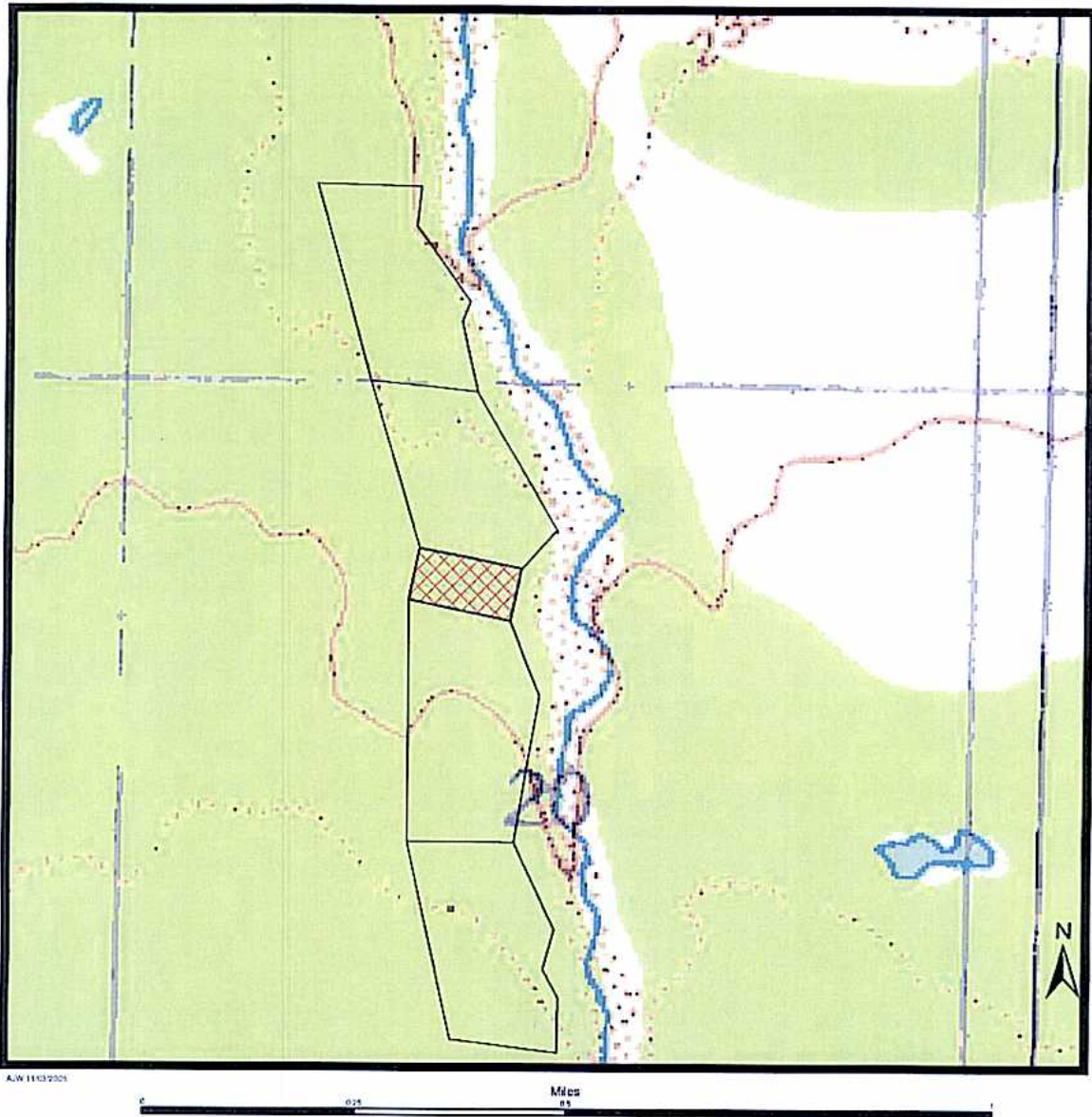
Attachment A



Southcentral Region

PROPOSED SUBDIVISION SALES PROJECT



Land within Sec. 20, Township 2 North, Range 8 West, Copper River Meridian



-  Proposed Lot
-  Existing Private Parcels

USGS QUAD 1:63,360
Valdez D-8
For more information contact:
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